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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,555	10/12/2001	Peter Goldstein	HO-P02306US0	1458

26271            7590            07/01/2003  
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EXAMINER
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MACK, RICKY LEVERN

ART UNIT	PAPER NUMBER
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2873

DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

M&L

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/976,555	GOLDSTEIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ricky L Mack	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 April 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 23 and 24 is/are allowed.
- 6) Claim(s) 1-14, 16-22 and 25-28 is/are rejected.
- 7) Claim(s) 15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 August 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10</u> .	6) <input checked="" type="checkbox"/> Other: <i>Detailed Action</i> .

**DETAILED ACTION**

***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 4/14/03 has been considered by the examiner in the office action mailed 1/15/03 has cited the references listed therein on PTO-948.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8, 12-14, 16-19 and 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nabeshima (5475209 A).

Nabeshima discloses (see figure 1), as in claims 14, 16-18 and 25-28, moving a focusing assembly (5) to a desired position base a first value, determining a second value for the actual linear movement of said focusing assembly; and comparing the first and second value to second value (refer to col. 9, lines 11-35). While Nabeshima does explicitly disclose that the a first value compared to a second value which measures actual linear movement, the examiner contends that this limitation is inherent to computer (see figure 1) controlled movement system such as the one disclosed by Nabeshima. In such systems, programmable logic controller make comparisons between values provided by some form of encoder and makes a determination of a second value which translates into physical linear movement with the use of a computer as

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claimed, indicia indicating out of range is also routinely used and considered inherent, in claims 19.

Regarding claims 2 and 12, Nabeshima discloses an actuator (16), which is considered a linear encoder as it provides feedback of linear movement.

Regarding claims 3 and 13, Nabeshima discloses a focusing assembly is a movable zoom lens (5).

With further regard to claim 14, Nabeshima discloses what is defined as a galvo-motor. Nabeshima discloses an actuator which produces a biasing magnetic field produced around a coil with a rod-like member (27a) attached to produce linear movement.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 7, 10, 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabeshima (5475209).

Nabeshima discloses the claimed invention except for the system providing visual and audible warnings, as in respective claims 6, 7, 10, 11 and 22. The examiner takes official notice that the use of visual and/or audible warnings are well known, particularly with operator controlled feedback systems.

6. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabeshima (5475209 A) as applied to claims 1 and 8 above, in further view of Silvy et al. (4700056 A).

Nabeshima discloses the claimed invention except for a digital/analog converter as in claims 4 and 9. Silvy discloses an objective lens focus device comprising a digital/analog converter (80). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the optical device of Nabeshima with a digital/analog converter as disclosed by Silvy for purpose of converting digital positional signals to analog form to provide power for movement (col. 7, lines 61-68; and col. 8, lines 28-52).

***Allowable Subject Matter***

7. The indicated allowability of claim 14 is withdrawn in view of the newly discovered reference(s) to Nabeshima (5475209 A). Rejections based on the newly cited reference(s) follow.

8. Claims 23 and 24 are allowed.

9. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is an examiner's statement of reasons for allowability: The prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the independent claim(s), in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in

claim(s) 23 and 24, wherein a closed loop focusing assembly for focusing a laser comprises identifying a desired laser focal depth value for photodisruption or ablation of an eye structure, as claimed. Regarding claim 15, the prior art does not teach the laser source being an infrared, ultrashort pulse laser, as claimed. The combination of all the claimed features are not anticipated or made obvious by the prior art and all of said features are relied upon for a determination of allowability.

***Response to Arguments***

11. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited for disclosing a device comprising a feedback system, which uses a computer (microprocessor, EPROM, logic controller, calculator, etc.) to make adjustments to optical components: Reynolds (4450358 A), Bates et al. (4899327 A), Pasch (5247153 A), Ogino (5768226 A), Freifeld (6160910 A) and Hunter et al. (6483071 B1).

Gadhok (6304359 B1) is cited for disclosing/defining types of galvo-motors (see col. 2, lines 7-19).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky L Mack whose telephone number is (703) 305-6984. The examiner can normally be reached on Monday-Friday (6:30 AM to 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (703) 308-4883. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7724 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

RM  
June 29, 2003

  
RICKY MACK  
PRIMARY EXAMINER